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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 6th February, 2014*

+ **MAC.APP. 429/2006**

GEORGY SOMAN Appellant
Represented by: Mr. Puneet Aggarwal, Advocate.

Versus

MOHINDER SINGH & ORS. Respondents
Represented by: Mr. Kamaldeep, Advocate for
Respondent No.3/Insurance
Company.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the present appeal, the appellant has assailed the impugned award dated 18.10.2005, whereby the learned Tribunal has granted compensation for a sum of Rs.2,95,000/- with interest at the rate of 6% *per annum* from the date of filing the claim petition till realization of the amount.

2. Present appeal has been filed for enhancement of the compensation amount noted above.

3. Brief facts of the case are that on 09.09.2003 at about 7.30 am, the appellant/injured was standing near Holy Child School, Tagore Garden, New Delhi, to board a bus for Azadpur. A bus bearing registration

No.DL-1PB-2518 came there, which used to drop the children of the school noted above and thereafter used to proceed towards Azadpur. While the appellant/injured was in process of boarding the said bus, its driver started moving the same at a high speed and before he could board the bus, it took left turn and the appellant was hit against a stationary bus, which was on the left side of the offending vehicle. As a result, he suffered fracture in his right hand and both right and left pelvis. His urethra was also ruptured in the accident.

4. Mr. Puneet Aggarwal, Id. Counsel appearing on behalf of the appellant submitted that the appellant has proved on record the medical documents Ex.PW2/1 to 18 through PW2, Dr. Dinesh Suman, Consultant of Mata Chanan Devi Hospital. Vide his discharge slip Ex.PW2/1, it is proved that he suffered fracture right radius, fracture pelvis, ruptured urethra and remained admitted in the hospital from 09.09.2003 to 24.10.2003. Thereafter, vide discharge slip Ex.PW2/2, it is proved that he was again admitted in the hospital on 10.12.2003 and discharged on 28.12.2003. As per discharge slip Ex.PW2/3, he was admitted on 29.12.2003 and discharged on 30.12.2003. Thereafter, as per discharge slips Ex.PW2/4 to 11, the appellant/injured remained admitted in hospital on 07.02.2004 (for one day), from 01.03.2004 to 09.03.2004, from 15.04.2004 to 16.04.2004 and again remained admitted for one day each on 20.05.2004, 08.07.2004, 19.08.2004, 11.09.2004 and 20.11.2004. Thus, he remained in hospital for 76 days.

5. Id. Counsel submitted that it is on record that appellant had been visiting hospital for follow-up treatments after every 15 days in an Ambulance and his mother used to pay Rs.600/- per visit as ambulance

charges. Accordingly, the appellant had incurred expenses on conveyance for follow-up treatment.

6. Mr. Aggarwal further submitted that the appellant is entitled to get compensation for marriage prospects as he has suffered rupture in urethra, which has caused the impotency. PW2, Dr. Dinesh Suman deposed that as per general view, in majority of the cases, urethra rupture can cause again and again a problem in erectile dysfunction (impotency can occur). In the present case, the appellant has become completely impotent due to which he could not marry. The said testimony of the doctor has not been rebutted in any manner by the respondents.

7. Learned counsel has argued that due to the injuries received in the accident, the appellant has become impotent, due to which he could not marry till date, therefore, he could not enjoy the pleasure of life of having wife and children. However, the sum of Rs.25,000/- granted by the learned Tribunal on account of marriage prospects is on very lower side.

8. He further submitted that at the time of the accident, the appellant was a student of Ist year for diploma course of Civil Engineering with Arya Bhatt Polytechnic, G.T. Karnal Road, but due to the injuries in his right hand, fracture in pelvis bone and urethra ruptured, he had suffered loss of one academic year, and thereafter he could not continue his study as he was unable to sit from 9.00 am to 5.00 pm and to do technical work. The appellant got admission in Polytechnic in the month of July, 2003 and met with an accident on 09.09.2003, therefore, he could not attend the classes. Accordingly, he was detained due to shortage of attendance.

9. Mr. Aggarwal further submitted that the learned Tribunal has granted compensation on lower side towards all the heads mentioned as under:-

“1	<i>On account of medical expenses</i>	<i>Rs.1,90,000/-</i>
2	<i>On account of conveyance charges</i>	<i>Rs. 5,000/-</i>
3	<i>On account of special diet</i>	<i>Rs. 10,000/-</i>
4	<i>On account of pain & sufferings, loss of Amenities of life, mental shock & agony</i>	<i>Rs. 50,000/-</i>
5	<i>On account of loss of education</i>	<i>Rs. 15,000/-</i>
6	<i>On account of marriage Prospects</i>	<i>Rs. 25,000/-”</i>

10. The appellant at the time of the accident, was a young boy of 17 years’ and was pursuing first year of diploma in Engineering. Simultaneously he was doing tuition work and earning Rs.4,000/- per month. However, while granting compensation, the learned Tribunal has not considered his earning.

11. He submitted that the injured remained admitted for 76 days in the hospital and took follow-up treatment for more than one and a half year and continued to take treatment for remaining life. Pain and torment, loss of amenities of life and the mental agony will continue for the whole life of the injured, however, the learned Tribunal has granted only Rs.50,000/- towards the aforementioned three heads.

12. He further submitted that due to the accident the appellant lost one academic year of his diploma course, therefore, he could not continue the said course, which had shattered his dream of life to become an Engineer. The learned Tribunal has not considered this fact and granted

a sum of Rs.15,000/- for loss of education/annual fee, which he had deposited at the time of admission. During the academic year, there are other expenses like conveyance, stationery and day to day expenses etc. have not been considered by the learned Tribunal while awarding compensation.

13. Learned counsel also submitted that till date the appellant is taking treatment for the injuries received in the accident in question, however, no amount has been granted by the learned Tribunal for the future treatment.

14. To strengthen his arguments regarding earning capacity of the appellant, learned counsel has relied upon a case of ***Chandrashekhar Madhusudan Vs. Suhas Shankar Shirke, 1982 ACJ 491***, wherein it is observed that the appellant is certainly not a normal healthy human being. His prospects for employment market cannot be compared with those of another person of his age who does not suffer from similar physical disability. All this is likely to prejudice the appellant's advancement in his chance of getting job.

15. On the other hand, learned counsel appearing on behalf of the respondent No.3/Insurance Company submitted that the appellant/injured had not received permanent disability in the accident in question, therefore, there is no loss of earning capacity in future. Moreover, the appellant failed to produce any proof regarding his earning, even, no evidence thereto has been examined.

16. He further submitted that the accident had taken place on 09.09.2003. He lost one academic year and whatever amount was spent

in that year, the learned Tribunal has granted compensation accordingly. Since he has not produced any proof regarding special diet, therefore, the learned Tribunal has not granted any compensation towards the same in favour of the appellant. He submitted that due to rupture in urethra, he became impotent, therefore, the learned Tribunal had granted sufficient amount towards marriage prospects.

17. I have heard, Ld. Counsels for the parties.

18. It is important to note that the appellant could not produce any document / proof regarding the income. Therefore, Ld. Tribunal has rightly not considered the income of the injured while awarding compensation. Accordingly, I confirm the same.

19. It is on record that the appellant remained in hospital for 76 days in all. The family used to visit him in hospital and thereafter for more than one and a half year, he continued to go to the hospital for follow-up treatment. Thus, he might have spent a huge amount on conveyance charges, however, the learned Tribunal has granted only Rs.5,000/- towards the same, which is also on very lower side.

20. As noted above, appellant/injured received injuries in the accident. He remained hospitalized for substantial time and till date he continues to take follow-up treatment, but the learned Tribunal has not granted any amount towards attendant charges.

21. Admittedly, the appellant failed to produce any proof regarding charges paid to the attendant, however, his parents and family had taken care of him, even in that eventuality also, the learned Tribunal ought to have granted appropriate amount towards attendant charges.

22. In case bearing **MAC. APP. No. 215/2009** titled as '**Azad Vs. Barun Brahamachari & Ors.**' decided by this Court on 25.03.2011, wherein, it is observed that the injured is entitled to pecuniary and non-pecuniary damages as well. The pecuniary or special damages, generally include the expenses incurred by the claimants on his treatment, special diet, conveyance, cost of nursing/attending, loss of income, loss of earning capacity and other material loss, which may require any special treatment or aid to the insured for the rest of his life. The general damages or the non-pecuniary loss include the compensation for mental or physical shock, pain, suffering, loss of amenities of life, disfiguration, loss of marriage prospects, loss of expected or earning of life, inconvenience, hardship, disappointment, frustration, mental stress, dejection and unhappiness in future life, etc.

23. In case of **Raj Kumar Vs. Ajay Kumar & Anr., 2011 1 SCC 343**, the Supreme Court has laid down the general principles for assessing the compensation in injury case. A person has not only to be compensated for the physical injuries but also for the loss which he has suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed.

24. It is true that no amount of compensation can restore the physical frame of the appellant. Therefore, it has been said by courts that whenever any amount is determined as the compensation payable to an injured for the injuries suffered in an accident, the object is to compensate such injured so far as money can compensate because it is impossible to equate the money with the human sufferings or personal

deprivations. Money cannot renew a broken and shattered physical frame. It is very natural whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.

25. As per the medical report dated 07.06.2010 regarding disability filed by Dr. Ram Manohar Lohia Hospital, New Delhi, the disability under question in this particular case has not been categorised in notification dated 01.06.01, No.16-18/97 NI.1., issued by the Ministry of Social Justice and Empowerment, therefore, it is not possible to assess the disability in relation to whole body. However, it is stated that as particular organ (for sexual function) is concerned, there is total (100 %) disability for normal intercourse/erectile function in appellant. It affects not only on the physical frame of the appellant, but also has the impact on the mental faculties; therefore, the loss is intangible.

26. In view of the above discussion, the compensation amount is hereby granted as under:-

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| 1. | On account of conveyance charges | : Rs.20,000/-. |
| 2. | On account of marriage prospects | : Rs. 1,00,000/-. |
| 3. | On account of loss of education | : Rs. 50,000/-. |
| 4. | On account of special diet | : Rs. 20,000/-. |
| 5. | On account of pain and sufferings, loss of amenities of life, mental shock and agony | : Rs.1,00,000/- |
| 6. | On account of future treatment | : Rs.25,000/- |

27. Consequently, the compensation amount comes as under:-

Sr. No.	Heads	Calculation as per MACT	Calculation as per this Court
I.	<i>On account of medical expenses</i>	<i>Rs.1,90,000/-</i>	<i>Rs.1,90,000/-</i>
II.	<i>On account of future medical treatment</i>	<i>-nil-</i>	<i>Rs.25,000/-</i>
III.	<i>On account of conveyance charges</i>	<i>Rs.5,000/-</i>	<i>Rs.20,000/-.</i>
IV.	<i>On account of special diet</i>	<i>Rs.10,000/-</i>	<i>Rs. 20,000/-.</i>
V.	<i>On account of pain & sufferings, loss of amenities of life, mental shock & agony</i>	<i>Rs. 50,000/-</i>	<i>Rs.1,00,000/-.</i>
VI.	<i>On account of loss of education</i>	<i>Rs. 15,000/-</i>	<i>Rs. 50,000/-.</i>
VII.	<i>On account of marriage prospects</i>	<i>Rs. 25,000/-</i>	<i>Rs. 1,00,000/-.</i>
	<i>TOTAL</i>	<i>Rs.2,95,000/- ”</i>	<i>Rs. 5,05,000/-</i>

28. Accordingly, the enhanced compensation amount comes to Rs.2,10,000/- (Rs. 5,05,000 - Rs.2,95,000/-)

29. The enhanced compensation amount shall carry interest @ 6% *per annum* from the date of filing of the claim petition till realization of the amount.

30. Accordingly, the respondent No.3/Insurance Company is directed to deposit the enhanced compensation amount with interest with the Registrar General of this Court within a period of five weeks from today, failing which, appellant/claimant shall be entitled for penal interest @ 9% *per annum* on account of delayed payment.

31. On deposit, the Registrar General is directed to release the amount in favour of the appellant/claimant on taking necessary steps by him.

32. In view of the above, the appeal is allowed.

SURESH KAIT, J.

FEBRUARY 06, 2014

Sb/RS/jg